
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

LABYRON WARREN, §
§
Petitioner, §
§
versus § CIVIL ACTION NO. 1:18-CV-440
§
DIRECTOR, TDCJ-CID, §
§
Respondent. §

**MEMORANDUM ORDER ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, Labyron Warren, a prisoner currently confined at the Coffield Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the petition as time-barred (docket entry no. 24).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. No objections to the Report and Recommendation have been filed to date.¹

¹ Petitioner received a copy of the Report and Recommendation on May 25, 2021 (docket entry no. 25).

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A Final Judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

Furthermore, the court is of the opinion petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, petitioner has not shown that the issues are subject to debate among jurists of reason or worthy of encouragement to proceed further. Petitioner has not sought leave of the Fifth Circuit Court of Appeals for an order authorizing the district court to consider the successive

petition. As a result, this court lacks jurisdiction to consider this petition. A certificate of appealability shall not issue in this matter.

SIGNED at Beaumont, Texas, this 21st day of June, 2021.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE